

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 544 of 1996

with

civil application no. 1196 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GSRTC

Versus

HIRABEN C PATEL

Appearance:

MR MD PANDYA for Petitioner
MR MTM HAKIM for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE H.R.SHELAT

Date of decision: 07/08/97

ORAL JUDGEMENT

This appeal is directed against the judgment and award of
MACT (Auxiliary) Vadodara dated 13.11.1995 upon
application of respondents Nos.1 and 2 -original

claimants , exercising its power under Section 140 of the Motor Vehicles Act, 1988 ('the Act'), by way of interim award to the tune of Rs. 25,000/- against the appellant-original opponent No.2 Gujarat State Road Transport Corporation ('GSRTC').

GSRTC has contended that the tribunal has erred in interpreting the expression 'arising out of use of the motor vehicle' employed in Section 140 , in that, it was submitted that the death of deceased Harish cannot be said to have arisen out of the use of the motor vehicle, like that, bus and, therefore, the tribunal should not have exercised powers under Section 140 of the ct. This submission is countenanced by the learned advocate for the original claimants.

Since, in view of the prima facie facts and circumstances, the tribunal has passed the interim award of compensation exercising its powers under Section 140 of the Act and directing the appellant to deposit in the tribunal the amount of Rs.25,000/- we do not deem it necessary and expedient to enter into the question raised before us which is also the main question to be resolved by the tribunal while deciding full claim of Rs. 3,00,000/-.The dispute between the parties is revolving round interpretation of the expression ' arising out of use of the motor vehicle' in light of the special facts obtaining in the case, in that, it has been the case of the claimants that a crowd belonging to one community with deadly weapons in their hands had attacked the S.T. bus and injured the passengers who were sitting in the bus and deceased Harish ,who was one of the victims, sustained fatal injuries. It is further contended by the claimants that though the death was caused by the rioters, the liability upon tort committed by the driver was of the opponents as the driver of the bus was specifically instructed and advised about violent mob with deadly weapons so that he may not proceed with the bus.It is further alleged that the driver and the conductor on seeing the members of violent crowd coming nearer the bus, they fled away. In this set of circumstances and allegations, what will be interpretation of the aforesaid expression is the important question to be resolved by the tribunal and since the tribunal has exercised , prima facie considering the facts, its power of awarding interim compensation 'on no fault liability' under Section 140 of the Act, we are not inclined to entertain the appeal against the impugned order.

It is in this context that we do not propose to deal with

and decide the exposition and interpretation of the aforesaid expression since the tribunal concerned is to decide this aspect on merits after full-fledged inquiry; whereas, at this stage, insofar as interim order under Section 140 is concerned, no decision by us will have influence on the merits of the pending matter and again, without deciding that point in this appeal, it can be left to the tribunal so that adjudication of claim after full fledged inquiry can be rendered after interpreting the expression. Direction to deposit the amount of Rs. 25,000/- of the tribunal shall be implemented by the appellant within a period of two weeks from today, if not done so far. The amount of Rs. 25,000/- shall not be disbursed by the Tribunal till final decision by the tribunal. Therefore, we are inclined to give direction for expeditious hearing on merits. The tribunal is directed to decide the claim petition as early as possible but not later than November 1997. The tribunal is directed to invest the entire amount in a nationalized bank in a fixed deposit receipt or any cumulative deposit scheme for a period of six months. In view of the aforesaid directions, observations and discussion, the appeal is dismissed. No orders on civil application.
